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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/254,966	03/16/1999	ROBERTO CORREA	MO-5092/LEA	7814

7590 03/25/2003

BAYER CORPORATION  
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EXAMINER
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WINKLER, ULRIKE

23

ART UNIT	PAPER NUMBER
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1648

DATE MAILED: 03/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/254,966

Applicant(s)

CORREA ET AL.

Examiner

Ulrike Winkler, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 February 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 29-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 29-31 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

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*Election/Restrictions*

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group 1, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 1 corresponding to non-structural proteins of FMDV.

Group 2, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 2 corresponding to non-structural proteins of FMDV.

Group 3, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 3 corresponding to non-structural proteins of FMDV.

Group 4, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 4 corresponding to non-structural proteins of FMDV.

Group 5, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 5 corresponding to non-structural proteins of FMDV.

Group 6, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 6 corresponding to non-structural proteins of FMDV.

Group 7, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 7 corresponding to non-structural proteins of FMDV.

Group 8, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 8 corresponding to non-structural proteins of FMDV.

Group 9, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 9 corresponding to non-structural proteins of FMDV.

Group 10, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 10 corresponding to non-structural proteins of FMDV.

Group 11, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 11 corresponding to non-structural proteins of FMDV.

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Group 12, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 12 corresponding to non-structural proteins of FMDV.

Group 13, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 13 corresponding to non-structural proteins of FMDV.

Group 14, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 14 corresponding to non-structural proteins of FMDV.

Group 15, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 15 corresponding to non-structural proteins of FMDV.

Group 16, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 23 corresponding to non-structural proteins of FMDV.

Group 17, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 24 corresponding to non-structural proteins of FMDV.

Group 18, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 25 corresponding to non-structural proteins of FMDV.

Group 19, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 26 corresponding to non-structural proteins of FMDV.

Group 20, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 27 corresponding to non-structural proteins of FMDV.

Group 21, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 28 corresponding to non-structural proteins of FMDV.

Group 22, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 29 corresponding to non-structural proteins of FMDV.

Group 23, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 30 corresponding to non-structural proteins of FMDV.

Group 24, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 31 corresponding to non-structural proteins of FMDV.

Group 25, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 32 corresponding to non-structural proteins of FMDV.

Group 26, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 33 corresponding to non-structural proteins of FMDV.

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Group 27, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 34 corresponding to non-structural proteins of FMDV.

Group 28, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 35 corresponding to non-structural proteins of FMDV.

Group 29, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 36 corresponding to non-structural proteins of FMDV.

Group 30, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 37 corresponding to non-structural proteins of FMDV.

Group 31, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 38 corresponding to non-structural proteins of FMDV.

Group 32, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 39 corresponding to non-structural proteins of FMDV.

Group 33, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 40 corresponding to non-structural proteins of FMDV.

Group 34, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 41 corresponding to non-structural proteins of FMDV.

Group 35, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 42 corresponding to non-structural proteins of FMDV.

Group 36, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 43 corresponding to non-structural proteins of FMDV.

Group 37, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 45 corresponding to non-structural proteins of FMDV.

Group 38, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 46 corresponding to non-structural proteins of FMDV.

Group 39, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 47 corresponding to non-structural proteins of FMDV.

Group 40, claim(s) 28-31, drawn to a peptide comprising a sequence SEQ ID NO: 48 corresponding to non-structural proteins of FMDV.

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The inventions listed as Groups 1-40 do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The technical feature linking groups 1-40 appears to be a peptide corresponding to the non-structural region of FMDV. Rodriguez et al. (Archives Virology, 1994) discloses using non-structural proteins for the distinction between vaccinated and infected swine. The antibodies produced by infected swine are highly reactive with the non-structural peptides. The limitation that the peptide "comprises 8-35 amino acids" does not restrict the peptide size because additional sequences can be included up to the entire non-structural protein sequences. Therefore, the technical feature linking the inventions of groups 1-40 does not constitute a special technical feature as defined by PCT Rule 13.2, as it does not define a contribution over the prior art.

The special technical feature of group 1-40 is considered to be the structure of the listed peptide. Since the special technical feature of one group is not present in the other groups and vice versa, unity of invention is lacking among the groups.

Accordingly, groups 1-40 are not so linked by the same or corresponding technical feature as to form a single general inventive concept.


Note a showing that the claimed sequences comprise a common structure would result in the rejoinder of those groups comprising the common structure. Providing a sequence alignment among the peptides and the peptides as they relate to the full length FMDV sequence can provide the necessary showing for rejoinder among some of the groups.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ulrike Winkler, Ph.D. whose telephone number is 703-308-8294. The examiner can normally be reached M-F, 8:30 am - 5 pm. The examiner can also be reached via email [ulrike.winkler@uspto.gov].

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached at 703-308-4027.

The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 or for informal communications use 703-746-3162.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

  
ULRIKE WINKLER, PH.D.  
PATENT EXAMINER 3/24/03